

Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NORTHWEST PIPELINE LLC,

Plaintiff,

v.

JONATHAN S. COPELAND, individually
and as his separate estate,

Defendants.

No. 2:19-cv-00148-RAJ

ORDER

This matter comes before the court on Plaintiff Northwest Pipeline LLC's ("Northwest") Motion for Default Judgment. Dkt. # 16. The Court, having reviewed the Motion and the record herein, **GRANTS** the Motion and directs the clerk to enter default judgment as directed at the conclusion of this Order.

I. BACKGROUND

Northwest is a federally regulated company that operates, maintains, and constructs natural gas pipelines. Dkt. # 1, ¶ 9. Northwest currently operates an eight-inch natural gas pipeline located in part on Defendant Jonathan Copeland's property. Dkt. # 17, ¶ 2. In order to meet the continually increasing demand for natural gas,

1 Northwest needs to remove portions of the existing line and replace it with a new twenty-
2 inch natural gas pipeline (the “Project”) located in part on Copeland’s property. *Id.*

3 On July 19, 2018, the Federal Energy Regulatory Commission (“FERC”) issued
4 Northwest a Certificate of Public Convenience and Necessity (“FERC Certificate”)
5 authorizing Northwest to, among other things, construct the Project on the Property. Dkt.
6 # 1, ¶ 13, Ex. A.

7 In October 2017, Northwest and Mr. Copeland entered into an Option for
8 Temporary Construction Easement Agreement (“Option”) that granted Northwest the
9 exclusive right and option to procure the TCE from Copeland. Dkt. # 17, ¶ 3. The
10 Temporary Construction Easement (“TCE”) would grant Northwest temporary easement
11 rights for construction workspace necessary to replace the portion of its pipeline on Mr.
12 Copeland’s property. *Id.*, Ex. A. At the time the Option was executed, Northwest paid
13 Mr. Copeland half of the purchase price for the TCE (\$5,550.00) plus compensation for
14 timber and an access road (\$900.00), for a total payment of \$6,450.00, to secure the
15 Option. *Id.* The Agreement further states that Northwest may exercise the option by
16 serving Mr. Copeland with written notice of exercise any time during the period between
17 October 16, 2017, and December 15, 2018, after which Mr. Copeland “then shall execute
18 and deliver to [Northwest] a Temporary Construction Easement Agreement.” *Id.* Upon
19 execution, Copeland would be paid the balance of the full purchase price. *Id.*

20 On December 3, 2018, Northwest sent Mr. Copeland a letter exercising its option
21 under the Agreement. Dkt. # 17, ¶ 5, Ex. C. However, despite multiple attempts to
22 secure the TCE, Mr. Copeland did not deliver the TCE to Northwest. *Id.*; see also Dkt. #
23 1 at 4-5.

24 Northwest filed its Complaint on January 31, 2019, alleging claims for breach of
25 the Option and condemnation of the TCE. Dkt. #1. After Mr. Copeland failed to timely
26 appear in or defend against this matter, Northwest moved for an Order of Default (Dkt.
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1 #13), which the Clerk entered on March 4, 2019. Dkt. #15. Northwest now moves for
2 entry of default judgment against Defendant and for an order of condemnation of the
3 TCE. Dkt. # 16. There has been no response to this motion or any other filing by Mr.
4 Copeland.

5 II. DISCUSSION

6 Federal Rule of Civil Procedure 55(b) authorizes a district court to grant default
7 judgment after the Clerk enters default under Rule 55(a). Upon entry of default, the
8 defendant's liability is established and the well-pleaded allegations in the complaint are
9 accepted as true. *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir.
10 1987). Where those facts establish a defendant's liability, the court has discretion, not an
11 obligation, to enter a default judgment. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir.
12 1980); *Alan Neuman Productions, Inc. v. Albright*, 862 F.2d 1388, 1392 (9th Cir. 1988).

13 Generally, courts must conduct a hearing to analyze damages if the moving party
14 does not produce sufficient evidence allowing the court to accurately calculate damages.
15 *See, e.g.*, Fed. R. Civ. P. 55(b)(2)(B); W.D. Wash LCR 55(b)(2)(A); *Televideo Sys., Inc.*,
16 826 F.2d at 917. However, in condemnation proceedings such as this, the "failure to
17 serve an answer constitutes consent to the taking and to the court's authority to proceed
18 with the action and fix the compensation." Fed. R. Civ. P. 71.1(d)(2)(A)(vi).

19 The Natural Gas Act ("NGA") establishes the framework for the condemnation of
20 property necessary for Northwest's Project. The NGA provides, in pertinent part:

21 When any holder of a certificate of public convenience and
22 necessity cannot acquire by contract, or is unable to agree
23 with the owner of property to the compensation to be paid for,
24 the necessary right-of-way to construct, operate, and maintain
25 a pipe line or pipe lines for the transportation of natural gas ...
26 it may acquire the same by the exercise of the right of
27 eminent domain in the district court of the United States for
the district in which such property may be located, or in the
State courts.

1 15 U.S.C. § 717f(h); *see also Transwestern Pipeline Co. v. 17.19 Acres of Prop. Located*
2 *in Maricopa Cty.*, 550 F.3d 770, 776 (9th Cir. 2008); *Nw. Pipeline G.P. v. Francisco*,
3 C08-0601MJP, 2008 WL 4547216, at *2 (W.D. Wash. Oct. 3, 2008).

4 Here, Northwest has established that it is the proper holder of FERC Certificate of
5 public convenience and necessity from FERC to construct, operate, and maintain the
6 pipeline by replacing the pipelines in the Existing Line. Dkt. # 5, Ex. A; Dkt. # 17, ¶ 2.
7 Northwest has also shown that despite its good faith negotiation efforts, it has been
8 unable to acquire the TCE necessary to complete the Project. Dkt. # 17, ¶ 2. Northwest
9 negotiated and entered into an option contract with Mr. Copeland for the TCE, and
10 properly exercised its option. Dkt. # 17, ¶ 5, Ex. C. Mr. Copeland has not delivered the
11 TCE and has apparently not responded to Northwest's efforts to secure the TCE. *Id.*

12 Northwest has therefore set forth a sufficient claim for condemnation under the
13 NGA. Northwest contends that the proper amount of just compensation for the TCE is
14 the value agreed to by the parties in their agreement and based on Northwest's
15 determination of value, which is five thousand, five hundred, and fifty dollars, and no
16 cents (\$5,550.00). Dkt. # 17, Exs. A, B. In the absence of any conflicting evidence, the
17 Court will find this value reasonable and sufficient to establish just compensation.

18 **III. CONCLUSION**

19 Based on the foregoing, the Court **GRANTS** Northwest's Motion. Dkt. # 16.
20 Northwest is granted an order of condemnation of, and shall be deemed to have
21 appropriated, the Temporary Construction Easement attached hereto as Exhibit A
22 effective as of the date of this Order.

23 **Within ten (10) days of this Order**, Northwest shall deposit with the court
24 registry pursuant to LCR 67 the amount of five thousand, five hundred, and fifty dollars,
25 and no cents (\$5,550.00), which amount shall be disbursed to Defendant Jonathan S.
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1 Copeland, less any clerk's handling fee, upon his request in this matter as just
2 compensation for the condemnation of the TCE.
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4 Dated this 8th day of May, 2019.
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8 The Honorable Richard A. Jones
9 United States District Judge
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